

DECEMBER 6, 2007

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

07 C 6882

JAMES LYNN GARRETT and)
SHANNON MARIE GARRETT)

Plaintiffs,)

v.)

ILLINOIS STATE TOLL HIGHWAY)
AUTHORITY, JIMMI MARSHALL,)
FREDDY DICKERSON, MARIO)
CALABRESE, PAUL EDWARD)
GONZALEZ, JOHN BENDA,)
DONALD J. McLENNAN, STEVEN T.)
MUSSER, and MICHAEL ZADEL)

Defendants.)

Case No.: 07cv99999

**JUDGE GUZMAN
MAGISTRATE JUDGE COX**

TRIAL BY JURY DEMANDED

COMPLAINT AT LAW

Now comes the plaintiffs, JAMES LYNN GARRETT and SHANNON MARIE GARRETT, by their attorney, JOHN M. DUGAN, and complaining of the defendants, ILLINOIS STATE TOLL HIGHWAY AUTHORITY, JIMMI MARSHALL, FREDDY DICKERSON, MARIO CALABRESE, PAUL EDWARD GONZALEZ, JOHN BENDA, DONALD J. McLENNAN, STEVEN T. MUSSER, and MICHAEL ZADEL, state as follows:

Count I

(Personal injury action of plaintiff, JAMES LYNN GARRETT, against defendants, ILLINOIS STATE TOLL HIGHWAY AUTHORITY, JIMMI MARSHALL, FREDDY DICKERSON, MARIO CALABRESE, PAUL EDWARD GONZALEZ, JOHN BENDA, DONALD J. McLENNAN, STEVEN T. MUSSER, and MICHAEL ZADEL, for joint negligence)

1. Jurisdiction of this Court is invoked under the provisions of Title 28 U.S. § 1332 (a)(1).

2. The ILLINOIS STATE TOLL HIGHWAY AUTHORITY is a statutorily created administrative agency in charge of construction, operation, regulation, maintenance, and control of the toll highways in Illinois. Pursuant to 605 ILCS 10/31(b) the ILLINOIS STATE TOLL HIGHWAY AUTHORITY has consented to suit in this case.

3. At all times pertinent hereto, JIMMI MARSHALL, FREDDY DICKERSON, MARIO CALABRESE, PAUL EDWARD GONZALEZ, JOHN BENDA, DONALD J. McLENNAN, STEVEN T. MUSSER, and MICHAEL ZADEL were employees of the ILLINOIS STATE TOLL HIGHWAY AUTHORITY.

4. Plaintiffs, JAMES LYNN GARRETT and SHANNON MARIE GARRETT, are citizens of the State of Kansas.

5. Defendants, ILLINOIS STATE TOLL HIGHWAY AUTHORITY, JIMMI MARSHALL, FREDDY DICKERSON, MARIO CALABRESE, PAUL EDWARD GONZALEZ, JOHN BENDA, DONALD J. McLENNAN, STEVEN T. MUSSER, and MICHAEL ZADEL, are citizens of the State of Illinois.

6. On or about December 6, 2005, Interstate 294 (hereinafter referred to as "I294") was a controlled-access toll highway running generally in a northerly and southerly direction, at or near milepost marker 32.7, which is near the location where I294 goes over St. Charles Road, County of Cook, State of Illinois.

7. At all times pertinent hereto, the plaintiff, JAMES LYNN GARRETT, was a passenger in a certain motor vehicle operated and controlled by the plaintiff, JAMES LYNN GARRETT, that was proceeding southbound in a traffic lane of the roadway of I294, second from the right shoulder, at or near milepost marker 32.7, in County of Cook, State of Illinois.

8. At all times pertinent hereto, the southbound roadway of I294 at or near milepost marker 32.7, in County of Cook, State of Illinois included four lanes for traffic, a left shoulder, and a right shoulder.

9. At all times pertinent hereto, the traffic lane of southbound roadway of I294, second from the right shoulder at or near milepost marker 32.7, in

County of Cook, State of Illinois was blocked by a stationary truck (hereinafter referred to as "Tollway truck") owned by the defendant, ILLINOIS STATE TOLL HIGHWAY AUTHORITY and operated by defendant, JIMMI MARSHALL.

10. At all times pertinent hereto, the defendant, ILLINOIS STATE TOLL HIGHWAY AUTHORITY owned an additional Tollway truck that were operated by defendant, PAUL EDWARD GONZALEZ, which was stopped, parked, and left standing on traffic lane next to the right shoulder within 15 feet of the rear of the Tollway truck owned by the defendant, ILLINOIS STATE TOLL HIGHWAY AUTHORITY and operated by defendant, JIMMI MARSHALL, on southbound I294 at or near milepost marker 32.7, in County of Cook, State of Illinois.

11. At all times pertinent hereto, the defendant, ILLINOIS STATE TOLL HIGHWAY AUTHORITY owned an additional Tollway truck that were operated by defendant, FREDDY DICKERSON, which was stopped, parked, and left standing on the right shoulder within 25 feet of the rear of the Tollway truck owned by the defendant, ILLINOIS STATE TOLL HIGHWAY AUTHORITY and operated by defendant, PAUL EDWARD GONZALEZ, on southbound I294 at or near milepost marker 32.7, in County of Cook, State of Illinois.

12. At all times pertinent hereto, the defendant, ILLINOIS STATE TOLL HIGHWAY AUTHORITY owned an additional Tollway truck that was operated by defendant, MARIO CALABRESE, which could have been used to give warning of the existence of the Tollway trucks owned by the defendant, ILLINOIS STATE TOLL HIGHWAY AUTHORITY and operated by defendants, JIMMI MARSHALL, PAUL EDWARD GONZALEZ, and FREDDY DICKERSON on southbound I294 at or near milepost marker 32.7, in County of Cook, State of Illinois.

13. At all times pertinent hereto, the defendants, JOHN BENDA, DONALD J. McLENNAN, STEVEN T. MUSSER, and MICHAEL ZADEL were supervisors of defendants, JIMMI MARSHALL, FREDDY DICKERSON, MARIO CALABRESE, and PAUL EDWARD GONZALEZ and were charged individually with the duty to make sure defendants, JIMMI MARSHALL, FREDDY DICKERSON, MARIO CALABRESE, and PAUL EDWARD GONZALEZ properly operated, and/or controlled their Tollway trucks in a safe manner on southbound I294 at or near milepost marker 32.7, in County of Cook, State of Illinois.

14. At all times pertinent hereto, the defendants, JIMMI MARSHALL, FREDDY DICKERSON, MARIO CALABRESE, PAUL EDWARD GONZALEZ, JOHN

BENDA, DONALD J. McLENNAN, STEVEN T. MUSSER, and MICHAEL ZADEL, operated and controlled Tollway trucks, as the servant and agent and/or in furtherance of a business mission of defendant, ILLINOIS STATE TOLL HIGHWAY AUTHORITY, who owned and controlled the Tollway trucks.

15. At all times pertinent hereto, it was the duty of the defendants to exercise a reasonable degree of care for the safety of the general public and the plaintiff, JAMES LYNN GARRETT, in particular, in their ownership, management, maintenance and control of Tollway trucks and the highway on southbound I294 at or near milepost marker 32.7, in County of Cook, State of Illinois, in order to avoid injury to the plaintiffs.

16. At all times pertinent hereto, there was in existence the “Manual on Uniform, Traffic Control Devices for Streets and Highways”, 2003 Edition, published by the United State Department of Transportation Federal Highway Administration, which in part provides the federal standards for traffic control devices when there is a double lane closure of a highway such as existed on southbound I294 at or near milepost marker 32.7, in County of Cook, State of Illinois.

17. At all times pertinent hereto, there was in existence the “Manual on Uniform, Traffic Control Devices, 2003 Edition, Illinois Supplement to the National Manual on Uniform Traffic Control Devices,” published by the Illinois Department of Transportation Division of Highways and which pursuant to 625 ILCS 5/1-100 et seq. adopted the “Manual on Uniform, Traffic Control Devices for Streets and Highways”, 2003 Edition, published by the United State Department of Transportation Federal Highway Administration as the official manual for a uniform system of traffic control devices, which in part provides the Illinois standards for traffic control devices when there is a double lane closure of a highway such as existed on southbound I294 at or near milepost marker 32.7, in County of Cook, State of Illinois.

18. At all times pertinent hereto, there was in existence the “Illinois Tollway Roadway Traffic Control and Communications Guidelines “ dated August 2005 and published by the Illinois State Toll Highway Authority which provides the procedures to be followed by Illinois State Toll Highway Authority maintenance personnel for all construction, maintenance and utility operations performed on the Illinois Tollway, including the highway such as southbound I294 at or near milepost marker 32.7, in County of Cook, State of Illinois.

19. Contrary to their duty to exercise a reasonable degree of care for the safety of the general public and the plaintiff, JAMES LYNN GARRETT, in particular, defendants, ILLINOIS STATE TOLL HIGHWAY AUTHORITY, JIMMI MARSHALL, FREDDY DICKERSON, MARIO CALABRESE, PAUL EDWARD GONZALEZ, JOHN BENDA, DONALD J. McLENNAN, STEVEN T. MUSSER, and MICHAEL ZADEL, were then and there guilty of one or more of the following acts and/or omissions:

- (a.) Stopped, parked, and left the Tollway truck in the traffic lane of southbound roadway of I294, second from the right shoulder at or near milepost marker 32.7, in County of Cook, State of Illinois, in violation of Illinois Vehicle Code (625 ILCS 5/11-1301(a));
- (b.) Stopped, parked, and left the Tollway truck in the traffic lane of southbound roadway of I294, second from the right shoulder at or near milepost marker 32.7, in County of Cook, State of Illinois, in violation of the “Manual on Uniform, Traffic Control Devices for Streets and Highways”, 2003 Edition, published by the United State Department of Transportation Federal Highway Administration, which was adopted by the Illinois Department of Transportation Division of Highways;
- (c.) Stopped, parked, and left the Tollway truck in the traffic lane of southbound roadway of I294, second from the right shoulder at or near milepost marker 32.7, in County of Cook, State of Illinois, in violation of the “Illinois Tollway Roadway Traffic Control and Communications Guidelines “ dated August 2005;
- (d.) Stopped, parked, and left the Tollway truck on a controlled-access highway in violation of Illinois Vehicle Code (625 ILCS 5/11-1303(j));
- (e.) Failed to stop, park, and leave the Tollway truck with the right-hand wheels parallel to and within 12 inches of the right-hand curb or as close as practicable to the right edge of the right-hand shoulder in violation of Illinois Vehicle Code (625 ILCS 5/11-1304(a));
- (f.) Failed to remove the Tollway truck from the traffic lane second from the right shoulder within a reasonable time;
- (g.) Failed to utilize the minimally required number of vehicles in its “rolling channel” moving operation in violation of the “Illinois

Tollway Roadway Traffic Control and Communications Guidelines “ dated August 2005;

- (h.) Failed to configure its vehicles in a safe and adequate tapered configuration as part of its “rolling channel” moving operation in violation of the “Illinois Tollway Roadway Traffic Control and Communications Guidelines “ dated August 2005;
- (i.) Failed to adequately and safely warn the motoring public, including Defendant/Third-Party Plaintiff, JAMES GARRETT, that the traffic lanes of southbound roadway of I294, first and second from the right shoulder at or near milepost marker 32.7, in County of Cook, State of Illinois two outside lanes of southbound Interstate 294 were closed;
- (j.) Created a hazard upon the roadway by “bunching up” the “rolling channel” moving operation configuration when it knew or should have known it was dangerous to do so for persons upon the roadway, including but not limited to the plaintiff, JAMES GARRETT;
- (k.) Failed to properly train its employees regarding proper guidelines in configuring and/or operating a “rolling channel” moving operation for a two-lane closure upon the highway;
- (l.) Failed to ensure that its employees operated a safe and properly configured “rolling channel” moving operation for a two-lane closure upon a highway;
- (m.) Failed to properly supervise Illinois State Toll Highway Authority maintenance personnel for all construction, maintenance and utility operations performed on the Illinois Tollway, including the highway such as southbound I294 at or near milepost marker 32.7, in County of Cook, State of Illinois; and
- (n.) Were otherwise careless and negligent.

20. As a direct and proximate result of the foregoing wrongful acts and/or omissions of the defendants, ILLINOIS STATE TOLL HIGHWAY AUTHORITY, JIMMI MARSHALL, FREDDY DICKERSON, MARIO CALABRESE, PAUL EDWARD GONZALEZ, JOHN BENDA, DONALD J. McLENNAN, STEVEN T. MUSSER, and MICHAEL ZADEL, the motor vehicle operated by the plaintiff, JAMES LYNN GARRETT, stuck the rear of the Tollway truck, causing the plaintiff, JAMES LYNN

GARRETT, to suffer severe and permanent injury to his head, neck, shoulder, back, arms, legs, body and nervous system, and that as a result he has, and will continue to suffer, great pain, and that he has been, and will continue to be, hindered from attending to his affairs and duties and from following his usual occupation, and that he has been, and will continue to be, deprived of large earnings and profits which he would otherwise have made, and that he has been, and will continue to be, compelled to expend or become liable for large sums of money for the care and treatment of said injuries.

WHEREFORE, plaintiff, JAMES LYNN GARRETT, asks compensatory damages against defendants, ILLINOIS STATE TOLL HIGHWAY AUTHORITY, JIMMI MARSHALL, FREDDY DICKERSON, MARIO CALABRESE, PAUL EDWARD GONZALEZ, JOHN BENDA, DONALD J. McLENNAN, STEVEN T. MUSSER, and MICHAEL ZADEL, in an amount of TEN MILLION AND NO/100 DOLLARS (\$10,000,000.00), plus costs.

COUNT II

(Loss of consortium action of plaintiff, SHANNON MARIE GARRETT, against defendants, ILLINOIS STATE TOLL HIGHWAY, AUTHORITY, JIMMI MARSHALL, FREDDY DICKERSON, MARIO CALABRESE, PAUL EDWARD GONZALEZ, JOHN BENDA, DONALD J. McLENNAN, STEVEN T. MUSSER, and MICHAEL ZADEL, for joint negligence)

1. – 20. Plaintiff, SHANNON MARIE GARRETT, hereby adopts and realleges paragraphs 1 through 20 of Count I of this Complaint at Law as paragraphs 1 through 20 of Count II and further state as follows:

21. At all times pertinent hereto, the plaintiff, SHANNON MARIE GARRETT, was the lawful wife of plaintiff, JAMES LYNN GARRETT.

22. As a consequence of JAMES LYNN GARRETT's injuries resulting from the careless and negligent acts or omissions of defendants, ILLINOIS STATE TOLL HIGHWAY, AUTHORITY, JIMMI MARSHALL, FREDDY DICKERSON, MARIO CALABRESE, PAUL EDWARD GONZALEZ, JOHN BENDA, DONALD J. McLENNAN, STEVEN T. MUSSER, and MICHAEL ZADEL, plaintiff, SHANNON MARIE GARRETT, as JAMES LYNN GARRETT's wife, has suffered and will continue to suffer loss of support and loss of society.

WHEREFORE, plaintiff, SHANNON MARIE GARRETT, asks compensatory damages against defendants, ILLINOIS STATE TOLL HIGHWAY, AUTHORITY, JIMMI MARSHALL, FREDDY DICKERSON, MARIO CALABRESE, PAUL EDWARD

GONZALEZ, JOHN BENDA, DONALD J. McLENNAN, STEVEN T. MUSSER, and
MICHAEL ZADEL, in an amount of TEN MILLION AND NO/100 DOLLARS
(\$10,000,000.00), plus costs.

Plaintiffs hereby demand trial by jury.

S/John M. Dugan

JOHN M. DUGAN

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